

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4784 OF 2007

Rachojirao Subrao Jadhav-Desau.... Petitioner

versus

Subrao Rachojirao Jadhav-Desai..... Respondent.
since deceased through L.Rs.

Shri A.A. Vala Sanghvi i/b P.J.Das for the petitioner
Shri P.S. Dani fpr respondent no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 09TH AUGUST, 2007

P.C.;

1. The petitioner is original plaintiff who instituted a suit for perpetual injunction against his father, step mother and purchasers of the suit property from defendant nos. 1 and 2 viz. father and step mother. The trial court so also the First Appellate Court has rejected the prayer for temporary injunction. The Appellate Court has dismissed the appeal concurring with the view taken by the trial court. Both the courts below have held that plaintiff/petitioner has failed to make out a prima facie case for grant of temporary injunction.

2. Perusal of the appellate order reveals that the suit property was gifted by the then Chatrapati in favour of the defendant no.1, which fact is not in

dispute. If this be the position, prima facie the property is self acquired property of the defendant no.1 to which the plaintiff cannot make a claim by succession. Even otherwise the plaintiff had filed a suit for partition in the year 1974 vide Regular Suit No.1/74 and the property in the present suit was not included as joint family property in regard to which partition was sought. This yet again is an indication that even the plaintiff did not consider the suit property as a joint family property. The partition suit was compromised between the plaintiff and his father on 22-8-1975. The subject matter of the present suit has not gone to the share of the plaintiff in the said partition as well. Relying on the said facts a prima facie finding of no semblance of title, of the plaintiff is reached by the first appellate court. I do not find that the said prima facie finding recorded by first appellate court suffers from any illegality, warranting any interference in exercise of writ jurisdiction. The learned counsel for the petitioner has contended that initially a temporary injunction was operating and thereafter an order of status quo was operating. Thus a submission is made that the interlocutory order operating for a long span of time be continued till the decision of the suit.

3. Per contra the learned counsel appearing for the respondent submits that granting statusquo order would open a penduras box, and prompt the petitioner to take up various other proceedings as has been done in the connected W.P.No. 5634/07 wherein the subject matter is alleged breach of an order of statusquo. I do not find any reason to deviate from the concurrent finding recorded by the court below. Hence present writ petition is dismissed summarily.

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